

# **Virginia Racing Commission**

## **MINUTES**

### **OF THE**

### **COMMISSION MEETING**

**December 17, 2008**

**HORSEMEN'S BUILDING  
COLONIAL DOWNS  
10700 HORSEMEN'S ROAD  
NEW KENT, VA**

#### **In Attendance**

##### **Commission Members**

Peter C. Burnett, Chairman  
Mark Brown, Vice Chairman  
William H. (Trip) Ferguson  
I. Clinton Miller  
David C. Reynolds

##### **Commission Staff:**

Victor I. Harrison, Executive Secretary  
David S. Lermond, Jr., Deputy Executive Secretary  
Kimberly M. Carter, Office Administrator  
C. Richard Harden, DVM, Commission Veterinarian

##### **Attorney General's Office:**

Amy K. Dilworth

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Prior to the regular monthly meeting, presentations were made by representatives of Colonial Downs/The Racing Channel, ODS Technologies, L.P., d/b/a TVG, XpressBet, Inc. and Churchill Downs Technology Initiatives Company, d/b/a TwinSpires, Inc. on their applications for the renewal of their advance deposit account wagering licenses for 2009. Deputy Secretary Lermond stated that he had performed the required reviews of these ADW applicants as well as of ADW provider Youbet.com.

In the matter of Colonial Downs/The Racing Channel, the renewal application was approved unanimously with seven conditions outlined in the Staff Report.

In the matter of TVG, represented by Melanie Frank, the renewal application was approved unanimously with seven conditions outlined in the Staff Report.

In the matter of XpressBet, represented by Greg Scoggins, the renewal application was approved unanimously with seven conditions outlined in the Staff Report.

In the matter of Youbet.com, the renewal application was approved unanimously with seven conditions outlined in the Staff Report.

Brad Blackwell, representing Twin Spires, made his case for approval. Colonial Downs' President Ian Stewart took the opposing view. Thoroughbred horsemen's representative Frank Petramalo offered clarifying comments and Standardbred horsemen's lobbyist Jerry Canaan focused on the characteristics of a temporary license.

There was a discussion legislative intent with respect to the provision on granting Twin Spires a temporary license. Commissioner Miller mentioned that the legislature could not have initially imagined the current dilemma. Colonial Downs' lobbyist Al Diamonstein agreed that was in fact the case. Colonial Down's counsel Jim Weinberg made the point that this matter is not an EZ Horseplay issue.

Following the discussion of the request for a temporary license by Twin Spires, Chairman Burnett made the following motion:

“In accordance with the provisions of Section 2.2-3711 (A)(7) of the Code of Virginia, I move that the Commission go into closed meeting for the purpose of:

1. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by the public body regarding specific legal matters requiring the provision of legal advice by such counsel which may include Twin Spires.

The motion was seconded and was unanimously approved.

Coming out of closed meeting, Chairman Burnett made the following motion:

“Whereas, the Virginia Racing Commission has convened a closed meeting on this date pursuant to an affirmative recorded vote in accordance with the provisions of The Virginia Freedom of Information Act; and

“Whereas, Section 2.2-3712 of the Code of Virginia requires a certification by this Commission that such closed meeting was conducted in conformity with Virginia law;

“Now, therefore, be it resolved, that the Virginia Racing Commission certifies that, to the best of each member’s knowledge, (i) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Commission in the closed meeting.”

The Commission determined that in the matter of TwinSpires, a temporary license for six months be granted; that the Commission find and impose 8.3 percent as the average ADW source market fee; that as a condition of the issuance of that license that the parties be given until January 1, 2009, to reach an agreement and advise the Commission of an agreement on or before that date; that, if necessary, that the Commission will appoint a mediator with the costs of that mediator’s services be divided equally between the licensee, the track, and the horsemen; that the mediator be required to report by February 1 to the Commission the progress of the mediation among the parties; and that if that report does not indicate that an agreement has been reached, that the Commission will determine based on that report and any other factors that it deems to consider, it will determine whether or not revocation of that temporary license is appropriate. If the Commission should decide to revoke that license, then it will provide 15-day notice to the parties as required by statute.

The motion was seconded by Commissioner Ferguson and the vote was as follows: Brown, aye; Ferguson, aye; Reynolds, aye; Miller, aye; and Chairman Burnett, aye.

Following the applications for renewal of Advanced Deposit Account Wagering Licenses for 2009, Chairman Burnett moved to the regular monthly meeting.

The minutes of the November 25, 2008 meeting were approved as amended.

During Commissioners comments, Chairman Burnett deferred comments to the Executive Director and the Deputy Executive Director with respect to the University of Arizona Racing Symposium.

Mr. Harrison stated that the focus of the Symposium was on racing medication and testing. The ARCI model rules committee spent the whole day going over the TCO<sub>2</sub> rules and the riding crop rule passed by the ARCI model rules committee meeting. The National Racing Compact was discussed with respect to SPMOs (Secondary Pari-Mutuel Organizations) - There may be a push to expand the racing compact or create a sister racing compact.

Acting on the recommendation from Mr. Harrison, the Commission approved Colonial Downs' simulcast racetracks for calendar year 2009.

Commissioner Reynolds gave a brief synopsis of the relevant monthly marketing and Executive Secretary Harrison gave a report on the status of the Omnibus Racing Bill.

James Weinberg, counsel for Colonial Downs, asked for a formal memorializing, in these minutes, of the termination of the Chesapeake license.

It was moved, seconded, and unanimously approved to accept Colonial Downs' representation that they have closed one of their OTBs and that eight licensed OTBs exist in Virginia.

During the ensuing discussion of the 2009 Thoroughbred Race Days, Jim Weinberg gave an outline version of the presentation, addressing three points:

- What is at stake in deciding upon this request is really the vision for Virginia racing and that what is at issue is the quality of the racing versus the quantity of racing and whether more days will yield the quality of racing that Colonial Downs thinks it needs to offer
- What purse funds are available?
- Significance of the marquee events of the Virginia Derby and the Colonial Turf Cup.

Frank Petramalo led the argument for a status quo with respect to racing days and supported his contention with historical background from the Year 2000 through the present day. Representing the VA thoroughbred breeders was Glen Petty who stated his case for year-over-year consistency with respect to the thoroughbred racing days. Supporting comments were also heard from horsemen Stephanie Nixon and Diana McClure.

The Commission set the next meeting for January 21, 2009 at 9:30 a.m. in the Horsemen's Building at Colonial Downs.

There being no further business, the monthly meeting of the Commission was adjourned at 12:50 p.m.